

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Laas Farms Inc.

OBJECTORS: Eagle Creek Colony; United States of America
(Bureau of Reclamation)

CASE 41N-0006-R-2019

41N 153278-00

41N 153282-00

41N 153283-00

41N 153284-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. The above-captioned claims appeared in the Preliminary Decree for Willow Creek (Basin 41N) with issue remarks. Eagle Creek Colony and the United States (Bureau of Reclamation) filed Objections to the claims.

2. On August 15, 2019, the above-captioned claims were consolidated into Water Court Case 41N-0006-R-2019.

3. On January 31, 2023, a Stipulation was filed. The Stipulation proposes the modification of claims 41N 153278-00, 41N 153282-00 and 41N 153284-00. The Maps included with the Stipulation are attached to this Report.

4. Pursuant to the Stipulation, the parties propose that claim 41N 153278-00 be modified as follows:

Maximum Volume: **3.02 AF**

THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

5. Pursuant to the Stipulation, the parties propose that claim 41N 153282-00 be modified as follows:

Maximum Flow Rate: **102.3 GPM**

~~NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.~~

Maximum Acres: ~~12.00~~ **6.00**

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	12.00 6.00		SESW	14	33N	4E	LIBERTY
Total:	12.00 6.00						

6. Pursuant to the Stipulation, the parties propose that claim 41N 153282-00 be modified as follows:

Irrigation Type: **WATER SPREADING**

Maximum Volume: 222.00 AC-FT

Maximum Acres: 111.00

Place of Use:

1	12.75	SWNW	14	33N	4E	LIBERTY
2	31.50	SW	14	33N	4E	LIBERTY
3	36.25	SENE	14	33N	4E	LIBERTY
4	30.5	NENW	14	33N	4E	LIBERTY

TOTAL: 111 ACRES

7. The issue remarks appearing on the claims have served their purpose and should be removed.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

4. Under Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers stipulations filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the stipulation are

supported by evidence. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” *United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees*, Case 42B-1, ¶ 3 at p. 14, (*Order Denying Motion* June 27, 2014). Considering these tenets, significant weight is given to the stipulation itself to establish the accurate historical use of the claim.

CONCLUSIONS OF LAW

1. The claims should be modified as discussed above. Modification of the claims resolves the Objections.
2. The remaining issue remarks have served their purpose and should be removed from the claims.

RECOMMENDATION

1. Upon review the record in this case, the above-captioned claims should be modified as discussed above. The issue remarks should be removed from the claims. The Objections should be resolved.

Post Decree Abstracts of Water Right Claims are attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 153278-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LAAS FARMS INC
PO BOX 774
SHELBY, MT 59474 0774

Priority Date: AUGUST 17, 1903

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate:

Volume: 3.02 AC-FT

THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: EAGLE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	14	33N	4E	LIBERTY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	15	33N	4E	LIBERTY
2			W2SWNW	14	33N	4E	LIBERTY

Remarks:

DAM EXTENDS INTO THE SESENE SEC 15 TWP 33N RGE 04E LIBERTY CNTY.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 153282-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LAAS FARMS INC
PO BOX 774
SHELBY, MT 59474 0774

Priority Date: AUGUST 17, 1903

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 102.30 GPM

Volume: 24.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 6.00

Source Name: EAGLE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	14	33N	4E	LIBERTY

Period of Diversion: MAY 15 TO AUGUST 4

Diversion Means: DAM

2		SWNESW	14	33N	4E	LIBERTY
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Period of Diversion: MAY 15 TO AUGUST 4

Diversion Means: DAM

3		NWNWSW	14	33N	4E	LIBERTY
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Period of Diversion: MAY 15 TO AUGUST 4

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 1

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 2

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 3

DIVERSION TO RESERVOIR #1 IS A DAM THAT EXTENDS INTO THE SESENE OF SEC
15 T33N R4E LIBERTY COUNTY

Period of Use: MAY 15 TO AUGUST 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6.00		SESW	14	33N	4E	LIBERTY
Total:	6.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

153282-00 153283-00 153284-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 153283-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LAAS FARMS INC
PO BOX 774
SHELBY, MT 59474 0774

Priority Date: JUNE 1, 1929

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 100.00 AC-FT
Climatic Area: 3 - MODERATE

Maximum Acres: 33.00

Source Name: EAGLE CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	14	33N	4E	LIBERTY
Period of Diversion:	MAY 15 TO JULY 24					
Diversion Means:	DAM					
2		SWNESW	14	33N	4E	LIBERTY
Period of Diversion:	MAY 15 TO JULY 24					
Diversion Means:	DAM					
3		NWNWSW	14	33N	4E	LIBERTY
Period of Diversion:	MAY 15 TO JULY 24					
Diversion Means:	DAM					
Reservoir:	ONSTREAM					
	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SWSWNW	14	33N	4E	LIBERTY
Diversion to Reservoir:	DIVERSION # 1					
Reservoir:	ONSTREAM					
	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SWNESW	14	33N	4E	LIBERTY
Diversion to Reservoir:	DIVERSION # 2					

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 3

DIVERSION TO RESERVOIR #1 IS A DAM THAT EXTENDS INTO THE SESENE SEC 15
T33N R4E LIBERTY COUNTY

Period of Use: MAY 15 TO JULY 24

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		W2SESW	14	33N	4E	LIBERTY
2	16.00		W2NENW	23	33N	4E	LIBERTY
3	7.00		S2NWSW	14	33N	4E	LIBERTY
Total:	33.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

153282-00

153283-00

153284-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 153284-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LAAS FARMS INC
PO BOX 774
SHELBY, MT 59474 0774

Priority Date: OCTOBER 3, 1956

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate:

Volume: 222.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 111.00

Source Name: EAGLE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	14	33N	4E	LIBERTY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

2		NWNWSW	14	33N	4E	LIBERTY
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

3		SWNESW	14	33N	4E	LIBERTY
---	--	--------	----	-----	----	---------

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 1

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 1

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	14	33N	4E	LIBERTY

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	12.75		SWNW	14	33N	4E	LIBERTY
2	31.50		SW	14	33N	4E	LIBERTY
3	36.25		SENE	14	33N	4E	LIBERTY
4	30.50		NENW	14	33N	4E	LIBERTY
Total:	111.00						

Remarks:

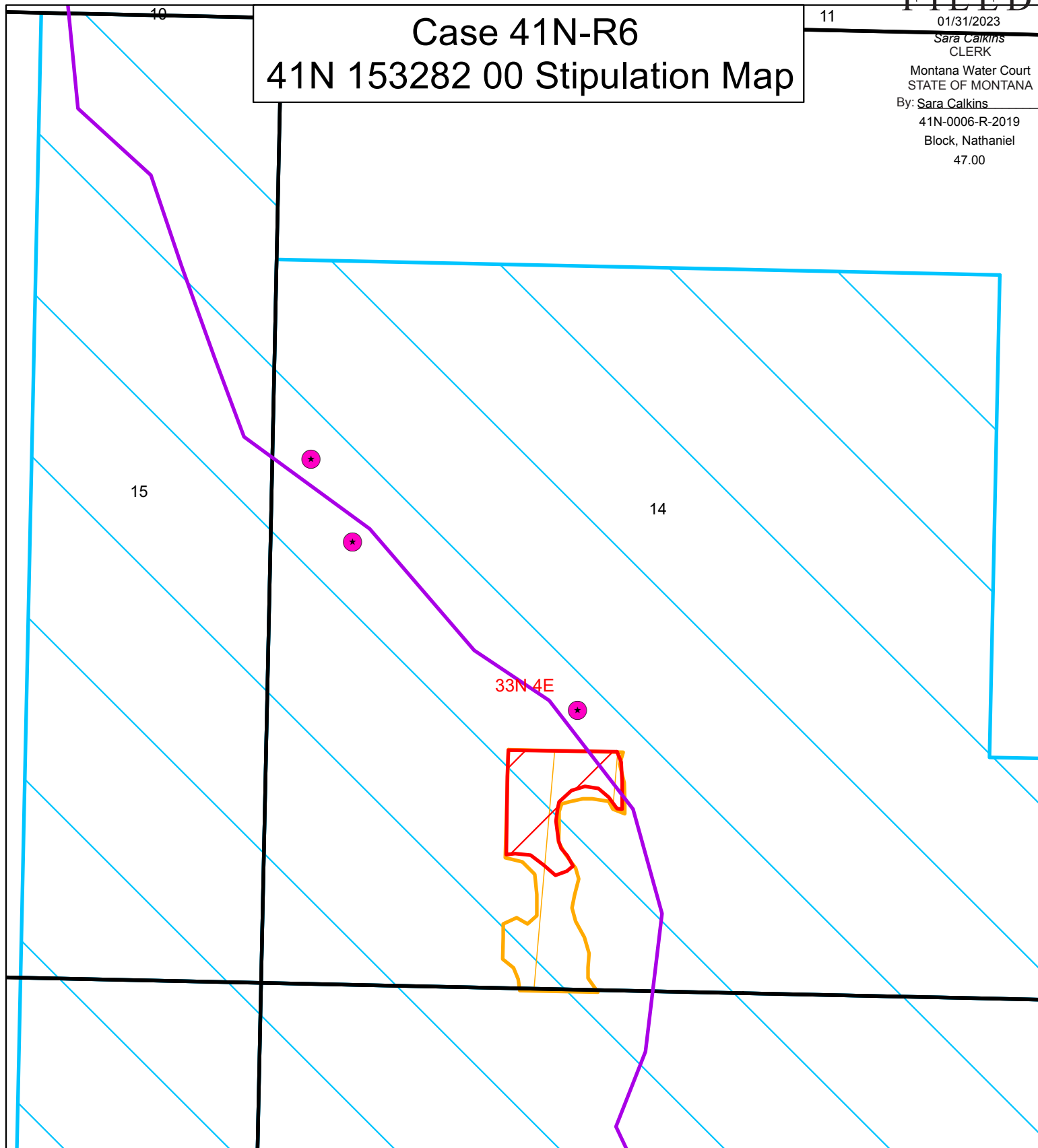
THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

153282-00 153283-00 153284-00






DAM EXTENDS INTO THE SESENE SEC 15 TWP 33N RGE 04E LIBERTY CNTY.

Case 41N-R6

41N 153282 00 Stipulation Map



Legend

-  Eagle Creek
-  41N 153282 00 PODs
-  41N 153282 00 Stipulated POU (6.00 acres)
-  41N 153282 00 Claimed POU (12 Acres)
-  Laas Farms Inc

0 0.125 0.25 0.5 Miles



EXHIBIT C

CERTIFICATE OF SERVICE

I, Heather M. Starnes, hereby certify that I have served true and accurate copies of the foregoing Report to the Court - Status Report to the following on 01-31-2023:

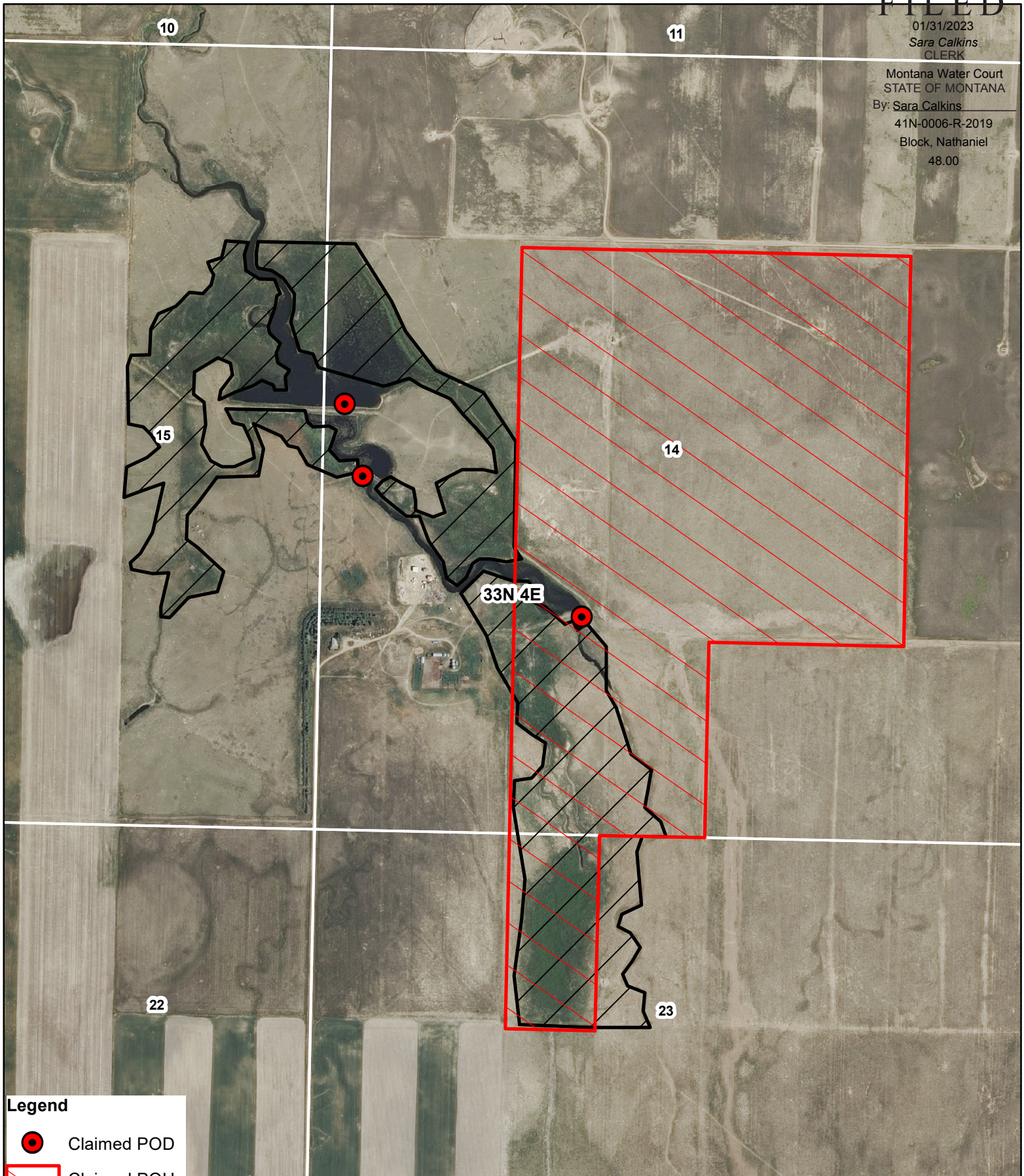
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Garlington Lohn & Robinson PLLP
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Missoula MT 59807
Representing: Laas Farms Inc.
Service Method: eService




Patrick Watt (Attorney)
Box 2269
GREAT FALLS MT 59403-2269
Representing: Eagle Creek Colony
Service Method: eService

Electronically signed by Sarah Olson on behalf of Heather M. Starnes
Dated: 01-31-2023

01/31/2023
Sara Calkins
CLERK

Montana Water Court
STATE OF MONTANA
By: Sara Calkins
41N-0006-R-2019
Block, Nathaniel
48.00



- Legend**
-  Claimed POD
 -  Claimed POU
 -  Proposed POU

2011 Aerial photo 3205
NAD 1983, Montana State Plane
For illustrative purposes only.
All depictions are approximate.

Case 41N-0006-R-2019
Claim 41N 153284-00
111 acres

United States R6-1, 0005



0 660 1,320 2,640 Feet



Attachment A
October 19, 2020

EXHIBIT D

CERTIFICATE OF SERVICE

I, Heather M. Starnes, hereby certify that I have served true and accurate copies of the foregoing Report to the Court - Status Report to the following on 01-31-2023:

Nicholas J. Lofing (Attorney)
Garlington Lohn & Robinson PLLP
PO Box 7909
Missoula MT 59807
Representing: Laas Farms Inc.
Service Method: eService

Patrick Watt (Attorney)
Box 2269
GREAT FALLS MT 59403-2269
Representing: Eagle Creek Colony
Service Method: eService

Electronically signed by Sarah Olson on behalf of Heather M. Starnes
Dated: 01-31-2023